

Memorandum



Date: November 1, 2005

Agenda Item No. 8(M)(1)(A)

To: Honorable Chairman, Joe A. Martinez and Members,
Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Black Creek Trail Jetty Enhancement and Maintenance Memorandum of
Understanding with National Parks Service

RECOMMENDATION

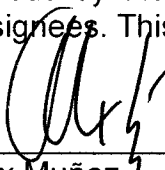
It is recommended that the Board approve the attached resolution adopting the Memorandum of Understanding between Miami-Dade County and the National Park Service pertaining to the improvements and maintenance of the jetty along the C-1 Canal extending from Black Point Park located at 24775 SW 87 Avenue, into Biscayne National Park.

BACKGROUND

On May 16, 1995 the Board of County Commissioners adopted the South Dade Greenways Network Master Plan, of which the Black Creek Trail along the South Florida Water Management District is a part.

Black Creek Trail terminates with a jetty along the C-1 Canal in Black Point Park and Marina. The County owns a portion of the 1.5-mile jetty within Black Point Park. The remaining mile is within Biscayne National Park under the jurisdiction of the National Park Service. In addition to assuming the responsibility for routine maintenance, the County will implement improvements to the entire jetty, including the National Park Service portion, with funding already made available from the Land and Water Conservation Fund. To provide uninterrupted visitor services, and to maintain a uniform standard of maintenance, the County seeks to enter into a Memorandum of Understanding with the National Park Service to ensure that both parties achieve their common goals and facilitate their intended coordination and collaboration for the improvements of the jetty.

This MOU shall become effective upon signature by all parties hereto, and is executed as of the date of the last of those signatures and shall be effective on the first of the month following execution and shall remain in effect for a term of five (5) years unless rescinded as provided in Article IX. It may be modified, reaffirmed and extended for three (3) consecutive five year periods by the mutual signed approval of the key individuals identified in Article V or their designees. This Agreement shall remain in effect for no more than a total of twenty (20) years.



Alex Muñoz
Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 18, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 8(M)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(1)(A)
11-01-05

RESOLUTION NO. _____

RESOLUTION APPROVING A MEMORANDUM OF
UNDERSTANDING WITH THE NATIONAL PARK
SERVICE REGARDING THE MAINTENANCE AND
IMPROVEMENTS OF THE BLACK CREEK TRAIL,
EXTENDING FROM BLACK POINT PARK AND
MARINA INTO BISCAYNE NATIONAL PARK

WHEREAS, the County passed Resolution R-679-95 on May 16, 1995, adopting the South Dade Greenway Network Master Plan, of which the Black Creek Trail along the South Florida Water Management District's (the "District") C-1 Canal forms a part; and

WHEREAS, the County, through its Park and Recreation Department, has Permit 7333 with the District to provide public access to the jetty along the C-1 Canal extending from Black Point Park and Marina into Biscayne National Park; and

WHEREAS, the District owned, County managed Black Creek Trail extends through Black Point Park and into Biscayne National Park; and

WHEREAS, the County, through its Park and Recreation Department, has Land and Water Conservation Fund monies to construct specific improvements to the jetty within Black Point Park and Marina and on Biscayne National Park properties; and

WHEREAS, the County intends to maintain the specific improvements within both Black Point Park and Biscayne National Park properties; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum of understanding,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the County Manager to execute the memorandum of understanding attached, substantially in the form hereto, and to exercise all rights contained therein on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of November, 2005. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. DDC

Diamela Del Castillo

By: _____
Deputy Clerk

MEMORANDUM OF UNDERSTANDING

between

Miami-Dade County

and

National Park Service

Article I – Background and Objectives

WHEREAS, this Memorandum of Understanding (MOU) seeks to facilitate cooperation in the management, protection, preservation, and maintenance of certain coastal areas to improve public recreational opportunities within the jurisdiction of both the National Park Service (NPS) and Miami-Dade County (County) (see Exhibit 1); and

WHEREAS, coordination and collaboration by National Park Service (NPS) and Miami-Dade County Park and Recreation Department (County) can better implement site improvements, visitor services, resource preservation and facility maintenance necessary for the combined visiting public (Exhibit 2); and

WHEREAS, the County passed Resolution R-679-95 on May 16, 1995, adopting the South Dade Greenway Network Master Plan, of which the Black Creek Trail along the South Florida Water Management District's C-1 Canal forms a part; and

WHEREAS, the County, through its Park and Recreation Department, has Permit #7333 with the South Florida Water Management District to improve and maintain canal right-of-way lands along the C-1 Canal, extending from SW 137 Avenue to and through Black Point Park and Marina, up to and including Biscayne National Park, owned by the National Park Service; and

WHEREAS, County and NPS lands indivisibly serve as resident and tourist visitor access and destination points for visitors wishing to enjoy the benefits and opportunities of County and NPS land and facilities; and

WHEREAS, the County and NPS have common goals of serving visitors to the areas while at the same time preserving resources within the areas; and

WHEREAS, both parties wish the MOU to reflect their common goals and intended coordination and collaboration to achieve those goals through future paragraphs.

Article II – Authority

In the Organic Act of 1916, U.S.C. § 1, Congress created the National Park Service (NPS) to promote and regulate the National Park System for “the purpose of conserving the scenery and the natural and historic objects and wild life therein and to provide for the enjoyment of the same in such manner and by such means as would leave them unimpaired for the enjoyment of future generations.” Congress further determined, in 16 U.S.C. § 1a-1, that the authorization of activities within units of the National Park System be construed, and the protection, management and administration of national parks be conducted, in the light of high public value and integrity of the National Park System.

Biscayne National Monument was established by Congress in 1968 “in order to preserve and protect for the education, inspiration, recreation, and enjoyment of present and future generations a rare combination of terrestrial, marine, and amphibious life in a tropical setting of great natural beauty” (PL 90-606). The Monument was later expanded in 1974 (PL 93-477), and again in 1980 (PL 96-287) to its current size of 173,000 acres (270 square miles), when it was also redesignated as the Park, where excellent opportunities are provided for hiking, nature viewing, fishing, snorkeling, scuba diving, boating, canoeing, kayaking, windsurfing and swimming. As a unit of the National Park System, Biscayne National park is authorized under 16 U.S.C. §§ 1-6 to participate in memoranda of understanding that document mutually agreed upon policies, procedures and relationships that do not obligate the National Park Service to fund specific initiatives.

Miami-Dade County Park and Recreation Department was established in 1929 and chartered in 1958 through the Miami-Dade County Home Rule Charter to “provide parks, preserves, playgrounds, recreation areas, libraries, museums, and other recreational and cultural facilities and programs.

Black Point Park lands were acquired in 1971 from the State through a combination of land transfer and eminent domain. A lease of State lands expanded the park in early -1980's, as part of the establishment of the national park. Its use as a coastal park and marina were approved by development plans beginning in 1982.

Miami-Dade County Code, Chapter 26 Rules and Regulations, require that the Park and Recreation Department manage properties in such a way as to leave them unimpaired for future generations by preserving “ a) all property in all parks such that no person entering or being within parks or areas operated and maintained by the Park and Recreation Department shall violate the provisions of by offense against property; b) vandalize, deface or destroy any park property or equipment within a park site; and c) damage or remove plants or resources. The Code further authorizes under Chapter 2-115.1C.C., adopts the Recreation and Open Space Element of the Comprehensive Development Master Plan, which authorizes the County to enter into cooperative agreements with the Federal government or agencies thereof for the purpose of addressing rules and regulations protecting its parks and carrying out its mandates and mission related to providing outstanding experiences.

NOW, THEREFORE, both parties agree as follows:

Article III – Scope of Work

A. In Regards to Jetty Enhancement:

The Black Creek Trail extends over 17 miles throughout Southeast Miami-Dade County along the C-1 canal. The last 1.5 miles of the Trail are located in Black Point Park (0.5-mile) terminating at the southern limit of Section 22 (Township 56, Range 40) and extend into Biscayne National Park (1-mile). This 1.5-mile section of the Trail, respectively managed by both the County and National Park Service, is used for walking, jogging, bicycling, fishing and observing nature (Exhibit 2).

The .5-mile section, located on County lands, already contains a path, picnic shelter, volley ball/ multi-purpose area, water fountain, park bench, picnic tables, fishing pier and trash receptacles. The remaining 1-mile of the jetty, located on National Park Service property, consists of a crushed rock footpath and trash receptacles. Further enhancements to the NPS portion of the trail are necessary to upgrade the trail to levels needed by recreational users (Exhibit 3).

B. The County agrees to:

1. Provide visitor services and facilities on County and NPS lands for the purpose of enhancing overall visitor experiences. Services and facilities contemplated include: trail surface improvements, interpretive signage, benches, fish servicing stations to include bait preparation and catch measuring, covered trash receptacles, recycling stations, safety railings, renovating an existing canoe launch adjacent to the jetty and new restroom building.
2. Expand on-going trash pickup and other maintenance to the jetty through community service crews or other means, based on available funding.
3. Communicate messages relating to NPS and its preservation to the visiting public.
4. Expand routine Department security patrols on County and NPS lands to ensure the safety of all park visitors, within available funding.
5. Provide NPS biologists with access to boat ramp areas to conduct periodic fishery creel surveys and ranger guided interpretive canoe trips.

C. The NPS agrees to:

1. Coordinate exotic plant removal as part of the State and National Park Service Exotic Plant Removal Program in Florida as established in an existing interagency MOU signed by both the Park and the County.
2. Trim vegetation along the jetty, within available funding.

3. Collaborate on developing interpretive messages and designing interpretive media and provide vendor information.
4. Provide interpretive materials for distribution or use by the County, as funding allows.
5. Perform National Environmental Policy Act (NEPA) compliance for joint projects on NPS lands/waters.

D. The County and the NPS agree to:

1. Communicate regularly on activities and projects within each area for the purpose of educating each other and to discover possibilities for joining similar or related efforts in order to realize greater achievements.
2. Coordinate with the other before undertaking projects and activities proposed on lands/waters within the other's jurisdiction.
3. Collaborate in areas of resource management, funding, restoration, visitor services, land acquisition, protection, and facilities maintenance for the purpose of maximizing time and efforts.

Article IV – Terms of Agreement

This MOU shall become effective upon signature by all parties hereto, and is executed as of the date of the last of those signatures and shall be effective on the first of the month following execution and shall remain in effect for a term of five (5) years unless rescinded as provided in Article IX. It may be modified, reaffirmed and extended for three (3) consecutive five year periods by the mutual signed approval of the key individuals identified in Article V or their designees. This Agreement shall remain in effect for no more than a total of twenty (20) years.

This MOU in no way restricts the County or NPS from participating in similar activities with other public or private agencies, organizations, and individuals.

This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the NPS and the County will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be set forth in separate written agreements executed by the parties and shall be independently authorized by appropriate statutory authority.

Article V – Key Officials

A. For National Park Service:

Superintendent
Biscayne National Park
9700 SW 328th Street
Homestead, FL 33033

B. For the County:

County Manager
Miami-Dade County
111 NW 1st Street
Miami, FL 33128

Article VI – Prior Approval

Where proposed improvements are anticipated, the party taking such action will in advance provide notice, and where necessary allow for review and prior approval of design documents, which shall not be unreasonably withheld. Parties shall allow for a minimum of 60 days notice for improvement authorization and 90 days advance notice for design approval.

Notification and communication shall be directed to:

For National Park Service:

Superintendent
Biscayne National Park
9700 SW 328th Street
Homestead, FL 33033

For the County:

Director
Miami-Dade Park and Recreation Department
275 NW 2nd Street
Miami, FL 33128

Article VII – Reports And/Or Other Deliverables

Upon request and to the full extent permitted by applicable law, the parties shall share with each other final reports of actions involving both parties.

Article VIII – Property Utilization

Unless otherwise agreed to in writing by the parties, any property furnished by one party to the other shall remain the property of the furnishing party. Any property provided by the NPS to the County during the performance of this MOU shall be used and disposed of as set forth in Federal property management regulations found at 41 C.F.R. Part 102.

Article IX – Modification and Termination

Either party may terminate this MOU by providing 60 days advance written notice to the other party. However, following such notice and before termination becomes effective, the parties will have 30 days to attempt to address and resolve the issues that led to the issuance of the notice.

Any disputes that may arise as a result of this MOU shall be subject to negotiation upon written request of either party, and each of the parties agrees to negotiate in good faith. The parties shall use their best efforts to conduct such negotiations at the lowest organizational level before seeking to elevate a dispute. If the parties cannot resolve the dispute through negotiation, they may agree to mediation using a neutral facilitator acceptable to both parties. Subject to the availability of funds, each party will pay an equal share of any costs for mediation services as such costs are incurred. If the dispute cannot be resolved through mediation, it will be elevated to a third party acceptable to both the NPS and County for a final decision.

This MOU may be reviewed and modified at any time upon written agreement of the County and the NPS.

Article X – Standard Clauses

A. Compliance With Laws

This MOU is subject to the laws of the United States and the State of Florida and Miami-Dade County, and all lawful rules and regulations promulgated there under, and shall be interpreted accordingly.

B. Civil Rights

During the performance of this MOU, the parties agree to abide by the terms of the U.S. Department of the Interior (hereinafter referred to as the Department) – Civil Rights Assurance Certification, non-discrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age or sex.

C. Promotions

The County will not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts, or other publications), which states or implies Governmental, Departmental, Bureau, or Government employee endorsement of a product, service, or position which the Department represents. No release of information relating to this MOU may state or imply that the Government approves of the County's work product, or considers the Department's work product to be superior to other products or services.

D. Public Information Release

The County will obtain prior approval, except where disclosure is required under Chapter 119 of the Florida statutes, from the National Park Service for any public information releases, which refers to the Department of the Interior, any bureau, National Park unit, or federal employee (by name or title), or to this MOU. The specific text, layout, photographs, etc. of the proposed release must be submitted with the request for approval.

E. Liability Provision

During the term of the MOU, the following mutual indemnification provisions shall apply.

The County does hereby agree to indemnify and hold harmless NPS to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$200,000, from any and all personal injury or property damage claims, liabilities, losses and causes of actions which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify the NPS from any liability or claim arising out of the negligent performances or failure of performance of NPS or any unrelated party.

NPS shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities, to the extent allowable under the Federal Tort Claims Act, 28 U.S.C. Sec. 2671 et seq., from any and all liability, losses or damages, including

attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Contract by NPS or its employees, agents, servants, partners, principals or subcontractors. NPS shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. NPS expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by NPS shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

NPS will be liable for property damage, injury or death caused by the wrongful or negligent act or omission of an employee, agent, or assign of NPS acting within the scope of his or her employment under circumstances in which NPS, if a private person, would be liable to a claimant in accordance with the law of the place where the act or omission occurred, only to the extent allowable under the Federal Tort Claims Act, 28 U.S.C. Sec. 2671 et seq.

F. Agreement

This Agreement represents the total agreement between the parties and, upon approval by both parties, cancels all previous Permit Agreements for this location of the COUNTY and NATIONAL PARK SERVICE.

G. Severability

In the event any paragraph, clause or sentence of this Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by the deletion thereof, provided to do so would not render interpretation of the lease provisions ambiguous or a nullity.

Article XI – Signatures

IN WITNESS HEREOF, the parties hereto have executed this agreement on the dates set forth below.

FOR NATIONAL PARK SERVICE:

Signature: Mark Lewis

Mark Lewis
Superintendent
Biscayne National Park

Date: 9/7/05

FOR THE MIAMI-DADE COUNTY:

Signature: _____

George M. Burgess
County Manager
Miami-Dade County

Date: _____

EXHIBIT 1

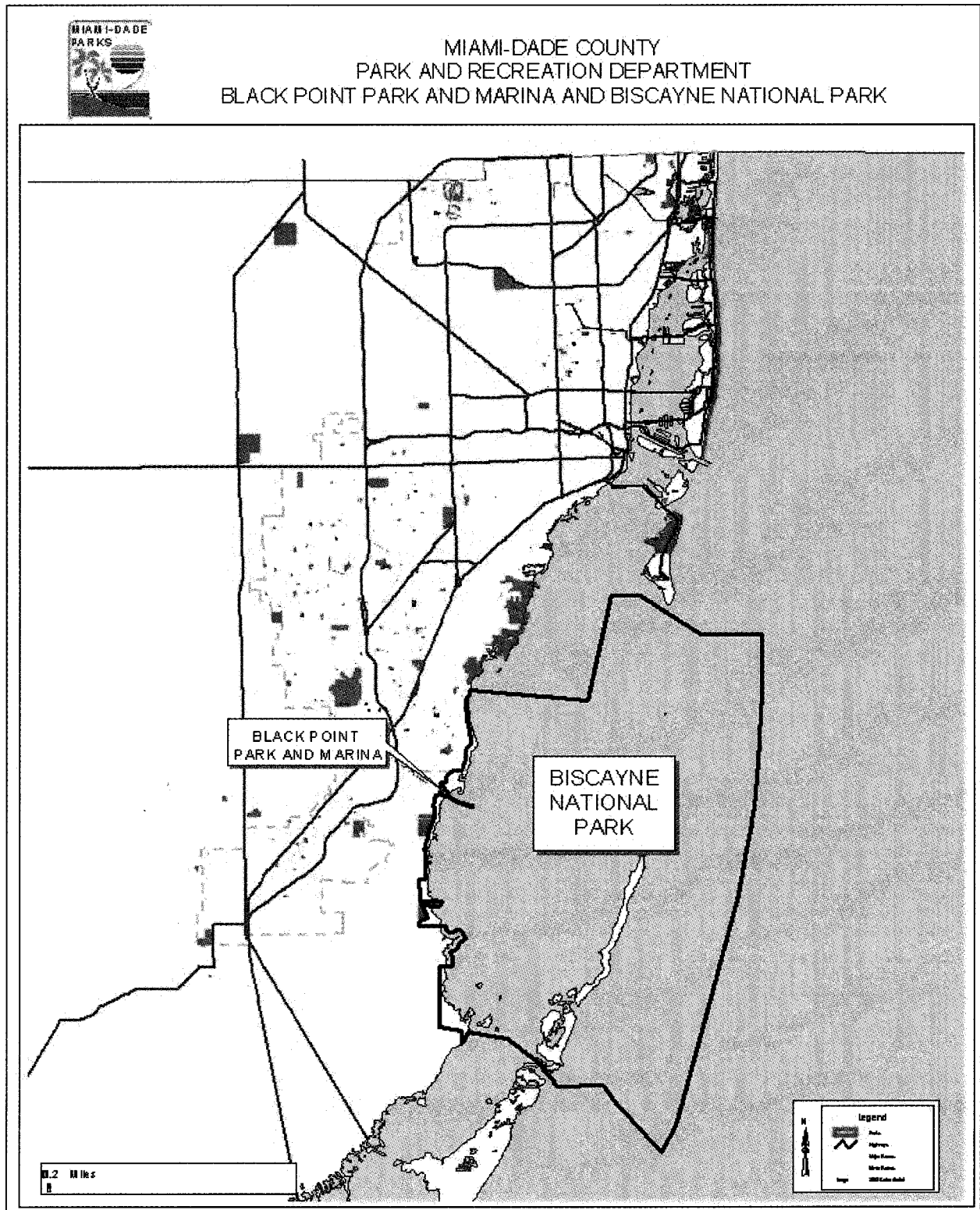


EXHIBIT 2



MIAMI-DADE COUNTY PARK AND RECREATION DEPARTMENT BLACK POINT PARK AND MARINA AREA BLACK CREEK TRAIL ENHANCEMENTS

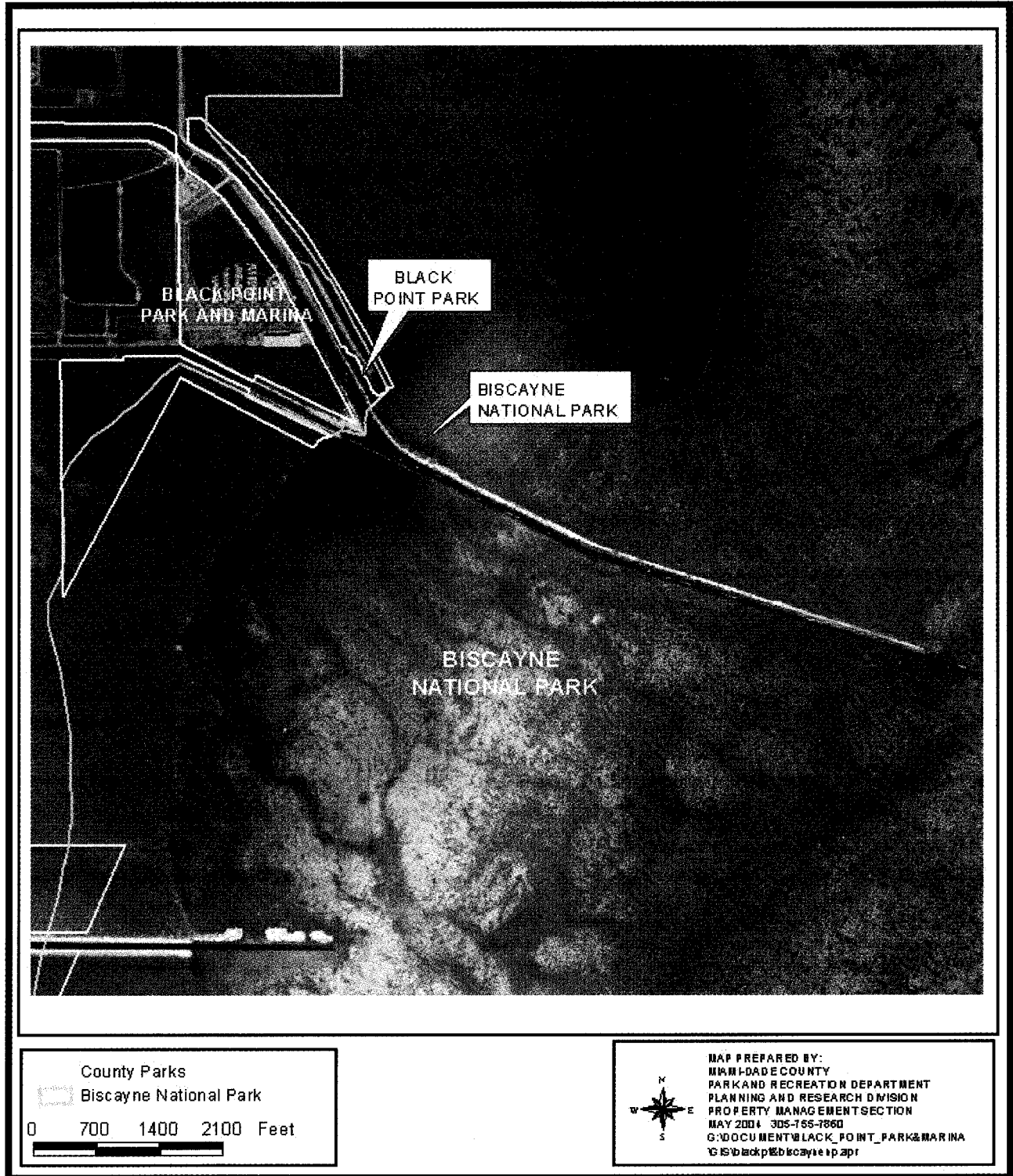
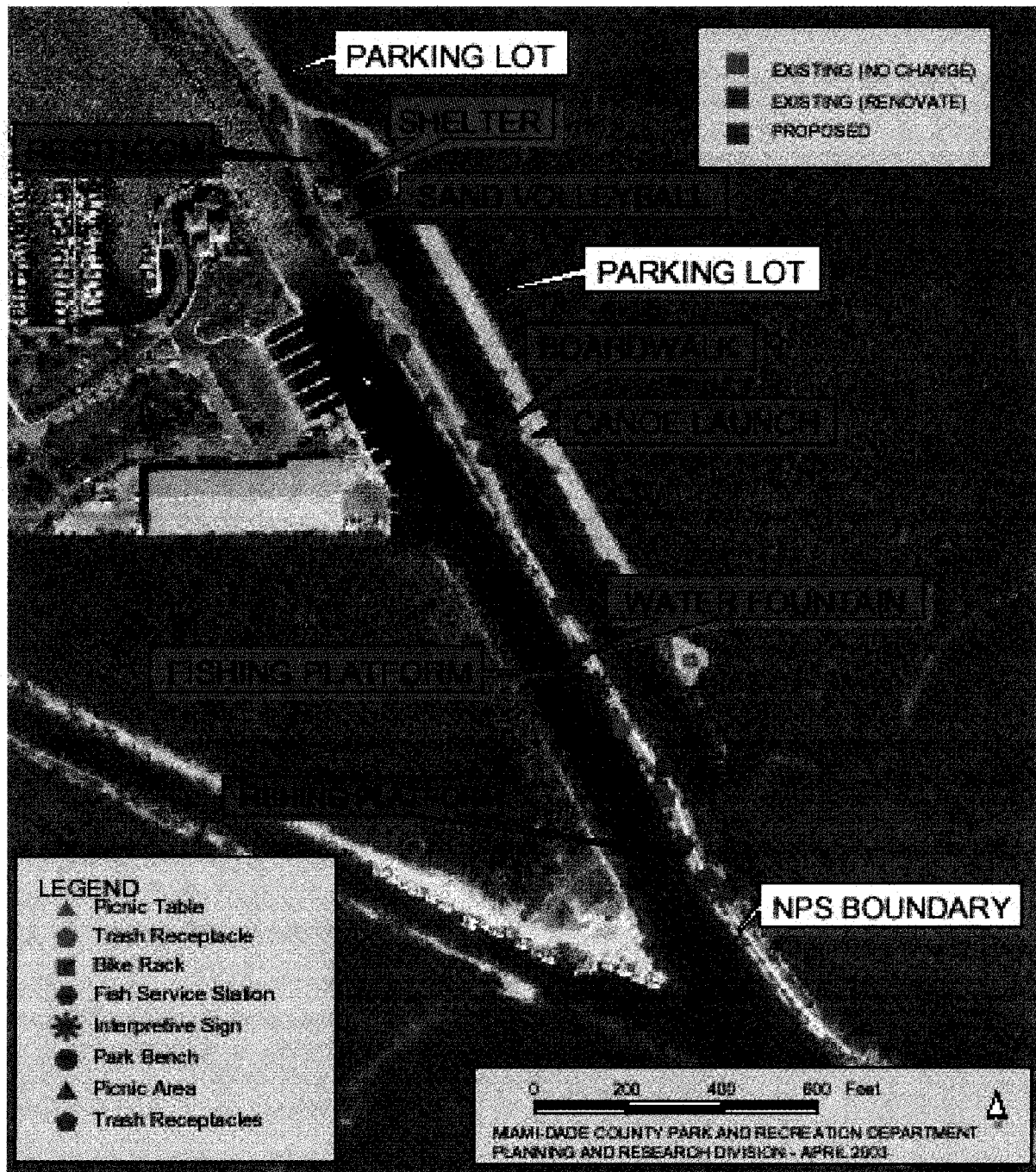


EXHIBIT 3



MIAMI-DADE COUNTY PARK AND RECREATION DEPARTMENT

BLACK POINT PARK AND MARINA AREA BLACK CREEK JETTY TRAIL



RESOLUTION NO. R-679-95

RESOLUTION ADOPTING SOUTH DADE GREENWAY NETWORK
MASTER PLAN AND DIRECTING THE COUNTY MANAGER TO
IMPLEMENT THE PLAN AS FUNDING PERMITS

WHEREAS, the proposed comprehensive system of multi-purpose trails in South Dade County known as the South Dade Greenway Network Master Plan would provide scenic, recreational and utilitarian corridors to be enjoyed by both residents and tourists, thereby promoting ecotourism and fostering economic development in that part of Dade County; and

WHEREAS, the Metropolitan Planning Organization by its action on May 12, 1994, has already included the South Dade Greenway Network Master Plan in the 1994-95 Transportation Improvement Program; and

WHEREAS, the South Florida Water Management District by its action in December 1994 has also approved and adopted the South Dade Greenway Network Master Plan; and

WHEREAS, six million dollars has already been committed by the Florida Department of Transportation, the Dade County Public Works Department and ISTEA to implement the South Dade Greenway Network Master Plan;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board hereby adopts the South Dade Greenway Network Master Plan, to create an organized system of ten interconnecting trails, totalling 194

alleys in length and spanning the area south of Kendall Drive to the Monroe County line, and west from Biscayne Bay to Everglades National Park. The Board further directs the County Manager to implement the Plan and to conduct all County activities in South Dade in a manner consistent with the Plan.

The foregoing resolution was sponsored by Commissioner Katy Sorenson and was offered by Commissioner Penelas, who moved its adoption. The motion was seconded by Commissioner Teele, and upon being put to a vote, the vote was as follows:

James Burke	Aye	Miguel Diaz de la Portilla	Aye
Betty T. Ferguson	Aye	Maurice A. Ferre	Aye
Bruce Kaplan	Aye	Gwen Margolis	Aye
Natacha S. Millan	Aye	Dennis C. Moss	Aye
Alexander Penelas	Aye	Pedro Reboredo	Aye
Katy Sorenson	Aye	Javier D. Souto	Aye
Arthur E. Teele, Jr.	Aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of May, 1995.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **KAY SULLIVAN**
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency. *me*

